was known to the carrier, *Geo. N. Pierce Co.* v. *Wells, Fargo & Co.* 236 U. S. 278, 10 MICH. L. REV. 317, 13 *ib.* 570, when ten days later the Cummins Amendment, to the Carmack Amendment to the Hepburn Act was signed by the President. Its intent was to prevent the carrier from escaping liability for the actual value of goods injured or lost by its default. Less than a year and a half later the Amendment of August, 1916, modified the Cummins Amendment, but meantime a few cases had arisen and reached the courts of last resort. In New York it had been decided the Cummins Amendment had not affected shipments of goods hidden from view by their wrappings. *D'Utassy* v. *Barrett,* 157 N. Y. S. 916, affirmed, 219 N. Y. 420, in which the goods were alleged to have been stolen by employees of the carrier, *Granberry* v. *Taylor,* 159 N. Y. S. 932, in which the goods were lost. In both cases a $50 valuation was held good. In *McCormick* v. *Southern Express Co.* (W. Va.) 93 S. E. 1048 the shipper, nothwithstanding an express receipt limiting liability to $5 and a tariff based on that valuation, was allowed to recover $300 for a "dark Cornish gamecock of fine breed." The cock was in a box covered with slats. In the instant case the goods were hidden from view, but the shipper told the agent they were household goods. The court held that under these circumstances the agent was entitled to fix a value and charge a rate commensurate with the risk, and could not rely on a value stated by the shipper. Under the Cummins Amendment the carrier might have limited liability by having the shipper "state in writing the value of the goods."

That there are limits to the effect of liability limitations in a published tariff on file with, and therefore presumptively approved by, the Interstate Commerce Commission is well brought out in *Boston & Maine Ry.* v. *Piper,* 38 S. Ct. 354. The bill of lading, and tariff sheets, contained the stipulation that liability from unusual delay and detention, caused by the carrier's negligence, should be limited to the amount actually expended by the shipper for food and water while so detained. The court held this to be no limitation of the amount of recovery under an agreed valuation, but an attempt to escape "liability for negligence by a contract which leaves practically no recovery for damages resulting from such negligence." It is submitted that such was the precise effect of the limitation upheld in *Geo. N. Price Co.* v. *Wells, Fargo & Co., supra,* in which a recovery of $50 was allowed for an $1800 car-load of automobiles. The decision in the instant case seems to be correct, and hence the other should be wrong. See 13 MICH. L. REV. 590.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE.—Plaintiff, an Ohio corporation, sued on a contract made in Michigan with defendants, a Michigan corporation. It was contended that the contract was void because a Michigan statute provided that a foreign corporation, not authorized to do business in Michigan, could not make a valid contract, in Michigan, and the plaintiff had not been so authorized. *Held,* the making of the contract was itself interstate commerce, and therefore outside the power of the state. *American Distributing Co.,* v. *Hayes Wheel Co.,* (March, 1918), 250 Fed. 109.

The contract was one by which the plaintiff undertook to act as agent of

the defendant in selling its product. It contemplated that plaintiff should sell goods for defendant, but was not itself a contract of sale. Federal regulation of commerce has been recognized as controlling the persons and property engaged in interstate transportation, the things transported, and the senders and recipients of things transported. Contracts of sale, whose direct effect is to require transportation of something, have been held to be within the control of Congress. *Robbins* v. *Shelby County, etc.*, 120 U. S. 489. But further than this courts have been loath to go, and could not logically go. Transportation is essential to commerce. *Railway Co.*, v. *Husen*, 95 U. S. 465; *County of Mobile*, v. *Kimball*, 102 U. S. 691; *Hammer* v. *Dagenhart*, U. S. Sup. Ct., June 1918. Mere manufacturing or producing, though it may result in interstate transportation, is not commerce. *United States* v. *Knight Co.*, 156 U. S. 1; *Del. L. & W. Ry.* v. *Yurkonis*, 238 U. S. 439. A contract by a person in one state to labor in another is not commerce, though it will result in commerce, *Williams* v. *Fears*, 179 U. S. 270; nor to do other acts in another state, *Pac. Adv. Co.*, v. *Conrad*, 168 Cal. 91; nor is making a contract of insurance interstate commerce, although the principals live in different states, *Paul* v. *Virginia*, 8 Wall. 168; *Hooper* v. *California*, 155 U. S. 648; *N. Y. Life Ins. Co.*, v *Craven*, 178 U. S. 389. The court in the principal case seems to have ignored the difference between a contract of agency to sell and a contract of sale.

CONTRACTS—"MUTUALITY"—COUNTER PROMISE IMPLIED.—Plaintiff wrote to defendant, "We will undertake the sale of your wheels . . . . upon the following terms and conditions: Commissions.—On all orders received, accepted and shipped by your company you will pay us 3% of the net sales price." This proposal was indorsed, "accepted," by the defendant. It was by its terms to continue for five years. Before the expiration of that time defendant repudiated the agreement and plaintiff sued for damages resulting from loss of future gains. *Held*, plaintiff could recover. *American Distributing Co.*, v. *Hayes Wheel Co.*, (March, 1918), 250 Fed. 109.

The issue made was whether the contract was "void for lack of mutuality." It was held that by the expression, "we will undertake the sale of your wheels," read in connection with the phrase, "orders taken by us shall be submitted for your acceptance, the plaintiff impliedly promised to use good faith and diligence in obtaining orders, and that there was therefore mutuality of obligation. See, in analogy, *Novakovich* v. *Union Trust Co.*, 89 Ark. 412; *Gilmore & Co.*, v. *Samuels & Co.*, 135 Ky. 706. No question was raised as to whether there was any promise on the defendant's part, as consideration for the plaintiff's implied promise. Yet this would seem the more doubtful point. Defendant promised nothing except to pay 3% commissions on "orders received, accepted and shipped" by it. There was no promise whatever that it would accept and ship orders received, unless it could be implied. In *Goodyear* v. *Koehler etc. Co.*, 143 N. Y. S. 1046, a very similar contract expressly provided that the defendant should not be liable for refusal or neglect to furnish the goods as ordered, and the court held that there was no mutuality of obligation. A dissenting opinion urged that there was an implied promise